1146

SUPREME COURT OF THE UNITED STATES.

No. 114.

EDWARD FIELD, PLAINTIFF IN ERROR,

vs.

PARDON G. SEABURY, WARD M. PARKER, AND HENRY B. GIFFORD.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE DISTRICTS OF CALIFORNIA.

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UNITED STATES OF AMERICA,
District of California.

Pleas before the Judge of the Circuit Court of the United States for the districts of California, at the court-house in the city of San Francisco, on the second day of July, of July term, in the year of our Lord one thousand eight hundred and fifty-five.

Witness the honorable M. Hall McAllister, judge of said court.

DISTRICTS OF CALIFORNIA, *ss:*

Be it remembered, that at the July term, in the year of our Lord one thousand eight hundred and fifty-five, before the honorable M. Hall McAllister, judge of the circuit court of the United States for the districts of California, at the court-house in the city of San Francisco, came Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, by S. W. Holladay and C. R. Saunders, esqs., their attorneys, and brought into said court, before the aforesaid judge thereof, their certain bill, complaint or declaration, against L. W. Patchin, William Neal, William B. Peake, E. J. Fairchild, and Edward Field, defendants, of a plea of trespass and ejectment, which said bill was filed June 5th, A. D. 1855, and follows in these words, that is to say:

Circuit Court of the United States for the districts of California, county of San Francisco.

PARDON G. SEABURY, WARD M. PARKER, and HENRY B. GIFFORD,
vs.
L. W. PATCHIN, WILLIAM NEAL, WILLIAM B. PEAKE, E. J. FAIRCHILD, and EDWARD FIELD.

Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, citizens and residents of the State of Massachusetts, the plaintiffs herein, file this their complaint against L. W. Patchin, William Neal, William B. Peake, E. J. Fairchild, and Edward Field, the defendants herein, citizens and residents of the State of California; and for cause of action, the plaintiffs aver that they are lawfully entitled to the possession of the following described lot or parcel of land, situate in the city and county of San Francisco, and known and designated on the official map or plan of the said city as water-lot number 458, and being also one of the lots known and designated by law as the San Francisco Beach and Water-Lots, beginning at a point on the easterly side of Front street, 45 feet and 10 inches southwardly from the southerly line of Washington street, running thence southwardly along the easterly line of Front street 45 feet and 10 inches; thence eastwardly, parallel with Washington street, 137½ feet; thence northwardly, parallel with Front street, 45 feet 10

inches; thence westwardly, parallel with Washington street, 137½ feet, to the place of beginning; the same being a lot 45 feet 10 inches front on Front street by 137½ feet deep, of the value of ten thousand dollars. Plaintiffs aver that they are lawfully entitled to the possession, use and occupation of said lot of land for a term of ninety-nine years from the 26th day of March, 1851.

Plaintiffs aver that the defendants have wrongfully and unlawfully entered upon said land, and that they are now wrongfully in the possession of the same, and wrongfully and unlawfully withhold and detain the possession of said land from the plaintiffs, and refuse to quit and deliver up to the plaintiffs the possession thereof, though the possession has been duly demanded of them—to the damage of the plaintiffs in the sum of ten thousand dollars.

Wherefore plaintiffs demand judgment against said defendants for the possession of said lot of land, above described, and damages in the sum of ten thousand dollars for the detention thereof and for costs of suit, and for such other and further relief in the premises as may be just.

HOLLADAY & SAUNDERS,
Att'ys for Pl'ffs.

June 5, '55.

Summons.

UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the districts of California:

PARDON G. SEABURY, WARD M. PARKER, and HENRY B. GIFFORD, plaintiffs,
vs.
L. W. PATCHIN et als., defendants.

Action brought in the said circuit court, and the complaint filed in the city and county of San Francisco, in the office of the clerk of the said circuit court.

The President of the United States of America, greeting:

To L. W. Patchin, William Neal, William B. Peake, E. J. Fairchild:

You are hereby required to appear in an action brought against you by the above named plaintiffs in the circuit court of the United States for the districts of California, and to file your plea, answer, or demurrer to the complaint filed therein, (a copy of which accompanies this summons,) in the office of the clerk of said court, in the city and county of San Francisco, within ten days (exclusive of Sundays and the day of service) after the service on you of this summons, if served within this county; or if served out of this county, then within forty days, or judgment by default will be taken against you.

The said action is brought to eject you (the defendants) from a certain water-lot situate in the city and county of San Francisco, and known and designated on the official map or plan of the said city as

water-lot number 458, and being also one of the lots known and designated by law as the San Francisco Beach and Water-Lots—and to recover one thousand dollars damages for the detention thereof: and if you fail to appear and plead, answer, or demur, as herein required, judgment by default will be entered against you and each of you.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this seventh day of June, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the seventy-ninth.

[The Seal of the Circuit Court for the districts of Cal'a.]

Attest: GEO. PEN. JOHNSTON, *Clerk*.

OFFICE OF THE MARSHAL
Of the Northern District of California, ss:

I hereby certify that I received the within summons on the ninth day of June, A. D. 1855, and personally served the same on the 9th and 14th days of June, A. D. 1855, by delivering to E. J. Fairchild, William B Peake, on the 9th day of June, William Neale; on the 14th day of June, (and L. W. Patchin with copy of complaint, June 9th,) personally, a copy of said summons; all of which of the said defendants were served in the city of San Francisco, within three miles of the office of the clerk of the U. S. circuit court.

Dated San Francisco, Cal'a, this 14th day of June, A. D. 1855.

WM. H. RICHARDSON,
U. S. Marshal.
By E. C. PALMER,
Deputy Marshal.

And afterwards, to wit, on the 16th day of June, in the year 1855 aforesaid, came the said defendants and made answer as follows, to wit:

Circuit Court of the United States for the districts of California.

PARDON G. SEABURY and others
vs.
L. W. PATCHIN and others.

And now come the said defendants, L. W. Patchin, William Neal, William B. Peake, and E. J. Fairchild, and Edward Field, and answering the complaint of the said plaintiffs in this action, say: That they deny that said plaintiffs, at the time of the commencement of this action, were lawfully entitled to the possession of the land described in said complaint, as therein alleged, or otherwise, or to the use and occupation of the same.

And the said defendants further deny that they have wrongfully, or unlawfully, entered upon said land, or that they are wrongfully in possession of the same, or that they wrongfully and unlawfully withhold and detain the possession of the same from the plaintiffs, as alleged in said complaint.

And said defendants further deny each and every the allegations and averments in the said complaint set forth and contained.

Dated this 16th day of June, A. D. 1855.

LOCKWOOD, TYLER & WALLACE,
Def'ts Att'ys.

And afterwards, to wit, on the second day of July, of said term of July, in the year of our Lord one thousand eight hundred and fifty-five, before the judge aforesaid, at the court-house aforesaid, being a term of said court, the following order was duly made and entered in said cause, to wit:

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.
} Ejectment.—Common law.

On motion of S. W. Holladay, plaintiff's attorney, it is ordered that a venire for eighteen jurors be issued in this cause, returnable Monday, the 9th day of July, A. D. 1855.

Venire.

The President of the United States of America, to the Marshal of the United States for the northern district of California, greeting:

We command you that you cause to come before a circuit court of the United States for the districts of California, to be held at the United States district court-room in the city of San Francisco, in the said districts of California, on Monday next, the 9th day of July, A. D. 1855, at eleven o'clock in the forenoon, eighteen good and lawful men of said districts, to serve as trial jurors. And have you then there the names of those jurors and this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this sixth day of July, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the eightieth.

[The Seal of the Circuit Court for the districts of California.]

Attest: GEO. PEN. JOHNSTON, *Clerk.*

Marshal's Return.

In obedience to the within venire, I have summoned and admonished James Ludlow, J. Y. Nicholson, Charles S. Ludlow, C. A. McNulty, F. A. Hassey, James Knowles, T. J. Wood, C. F. Brainard, Thomas Glenn, Geo. H. Preston, L. W. Newell, A. M. Comstock, Wm. Burling, L. P. Eaton, John Irving, Geo. F. Weller, F. O. Wakeman, and Frank Lemon, to be and appear before the honorable U. S. circuit court for the districts of California, on the 9th day of July, A. D. 1855.

WM. H. RICHARDSON, *U. S. Marshal.*
By E. C. PALMER, *Deputy.*

Dated San Francisco, July 9th, 1855.

And afterwards, to wit, on the ninth day of July, in the year one thousand eight hundred and fifty-five, being the day set for the trial of said cause, at the court-house aforesaid at San Francisco, before the court aforesaid, the following proceedings were had in said cause, and duly entered of record, to wit:

Cause brought on for trial.

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.
} In ejectment.

The marshal having returned the venire issued in this cause this day, and the following named persons having been summoned to serve as jurors in this cause, and having answered to their names when called, were excused by the court until to-morrow at 11 o'clock, a. m., because of the absence of defendant's att'y; to wit: James Ludlow, C. A. McNulty, T. J. Wood, Geo. H. Preston, Wm. Burling, Geo. F. Weller, J. Y. Nicholson, F. A. Hassey, C. F. Brainard, L. W. Newell, L. P. Eaton, F. O. Wakeman, Charles S. Ludlow, James Knowles, Thomas Glenn, A. M. Comstock, John Irving, and Frank Lemon.

C. A. McNulty was excused from further attendance as juror, having been previously summoned to serve as a juror in another court.

And afterwards, to wit, on the tenth day of July, in the year last aforesaid, at the court-house aforesaid, before the said court, the following further proceedings were had in said cause, to wit:

Cause brought on for trial—resumed from yesterday.

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.
} In ejectment.

The jurors heretofore snmmoned in this cause were called, answered, and were accepted, rejected, excused, &c., as follows, viz:

Thomas Glenn, accepted.
F. A. Hassey, do.
L. P. Eaton, do.
Frank Lemon, excused by consent of counsel for plffs. and defts.
James Ludlow, accepted.
L. W. Newell, do.
Wm. Burling, do.
Geo. H. Preston, excused by consent of counsel for plffs. and dfts.
Charles S. Ludlow, accepted.
John Y. Nicholson, peremptorily challenged by plff's counsel.
James Knowles, accepted.
Geo. F. Weller, do.
T. J. Wood, do.

F. O. Wakeman, challenged for cause; ordered to stand aside for the present.

C. F. Brainard, accepted.

A. M. Comstock, peremptorily challenged by plffs.

John Irving, excused on account of sickness, by consent of plff's and dft's counsel.

The panel having been exhausted, (one having been excused yesterday,) on motion of S. W. Holladay, esq., plaintiff's att'y, it is ordered that a venire for two talesmen be issued in this cause, returnable forthwith.

Venire.

The President of the United States of America, to the Marshal of the United States for the northern district of California, greeting:

We command you that you cause to come before a circuit court of the United States for the districts of California, being held at the United States district court-room in the city of San Francisco, in the said districts of California, on this the 10th day of July, A. D. 1855, instanter, two good and lawful men of said districts, to serve as trial jurors. And have you then there the names of these jurors and this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this tenth day of July, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the eightieth.

Attest: GEO. PEN. JOHNSTON, *Clerk.*

Marshal's Return.

In obedience to the within venire, I have summoned and admonished W. G. Badger and A. S. Edwards, to appear instanter before the honorable U. S. circuit court for the district of California, on the 10th day of July, A. D. 1855.

WM. H. RICHARDSON,
U. S. Marshal.

By E. C. PALMER, *Deputy.*

The said venire for two talesmen having been returned by the U. S. marshal, A. S. Edwards was called, answered, and was accepted. W. G. Badger was do., do., do., do. excused. The requisite number of jurors having qualified, they were sworn and empannelled, "the issue joined to try," as follows, viz:

Thomas Glenn, F. A. Hassey, L. P. Eaton, James Ludlow, L. W. Newell, Wm. Burling, Charles S. Ludlow, James Knowles, Geo. F. Weller, T. J. Wood, C. F. Brainard, A. S. Edwards.

S. W. Holladay having opened the case on the part of the plaintiffs, H. L. Dodge sworn as witness. R. A. Lockwood having opened the case for the defence, Wm. S. Clark, John A. Clark, Wm. C. Parker, Joseph Galloway, and J. D. Stevenson, were sworn as witnesses for defence. Cause continued until to-morrow.

And afterwards, to wit, on the eleventh day of July, of the term and year last aforesaid, at the court-house aforesaid, the following further proceedings were duly had in said cause, to wit:

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.

Cause continued from yesterday. Thomas Sprague, Adolphe Markwald, Charles D. Carter, and Joseph Henriques, sworn as witnesses for the plaintiffs. Argument for plaintiffs by S. W. Holladay, on conclusion of which, further hearing postponed until to-morrow.

And afterwards, to wit, on the twelfth day of July, of the year aforesaid, at the court-house aforesaid, being a day of the term last aforesaid, before the court aforesaid, the following further proceedings were duly had in said cause, to wit:

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.

Cause continued from yesterday. Argument continued for defendants by R. A. Lockwood, and concluded for plaintiffs by S. W. Inge. Court having charged the jury, they retired to consult upon their verdict. And now at this day the said jurors come into court, and, through their foreman, do say as follows:

P. G. SEABURY et als.
vs.
L. W. PATCHIN et als.

The jury in the above-entitled cause find verdict in favor of the plaintiffs.

A. S. EDWARDS,
Foreman.

On motion of counsel for defendants, stay of proceedings ordered for ten days from this date.

And afterwards, to wit, on the fourteenth day of July, in the year 1855, aforesaid, came the defendants aforesaid, by their attorneys, Lockwood, Tyler and Wallace, and filed their bill of exceptions in the cause aforesaid, which said bill is in words, terms, figures, and endorsements, as follows, to wit:

In the Circuit Court of the United States for the northern district of California.

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.

Be it remembered, that on the trial of the above-entitled cause, the plaintiffs, in support of their action, gave in evidence the following grant, executed to Thomas Sprague, through whom the plaintiffs derive title, to wit:

"To all persons to whom these presents shall come or concern—The town of San Francisco, in the Territory of California, by John W. Geary, first alcalde of San Francisco, greeting:

"Whereas S. W. Kearney, former Governor of the Territory of California, did (by decree given at Monterey, then the capital of California, on the tenth day of March, in the year of our Lord one thousand eight hundred and forty-seven) grant, convey, and release, unto the town of San Francisco, the people or corporate authorities thereof, all the right, title, and interest, of the Government of the United States and the Territory of California, in and to the beach and water-lots, on the east front of said town of San Francisco, included between the points known as the Rincon and Fort Montgomery, excepting such lots as might be selected for the use of the United States Government, by the senior officers of the army and navy then here, provided said grounds, thereby ceded, should be divided into lots, and sold by public auction to the highest bidder, after three months' notice previously given. And whereas, by virtue of said grant, and by direction of the ayuntamiento, a certain portion of said ground, duly divided into lots as aforesaid, after the required notice had been given in accordance with said decree, was exposed to sale at public auction on the third day of January, A. D. eighteen hundred and fifty, and one of said lots, so ordered to be sold, numbered on the map of said town four hundred and fifty-eight, was sold to Thomas Sprague for the sum of sixteen hundred dollars, being the highest price then and there offered for the same. Therefore, by virtue of the authority in me vested, and in pursuance of the order of the ayuntamiento, or town council of the town of San Francisco, I, John W. Geary, first alcalde as aforesaid, for and in consideration of four hundred dollars, to me in hand paid, in trust for said town, before the delivery of these presents, (and the receipt of which is hereby acknowledged,) and for the further consideration of the sum of twelve hundred dollars to be paid to me, and to my successors in office, (in trust for the said town of San Francisco,) in three equal payments, to wit, on the third day of April, the third day of July, and the third day of October, in the year aforesaid, do grant, bargain, sell, assign, convey, and confirm unto the said Thomas Sprague, his heirs, and assigns forever, the said water-lot numbered four hundred and fifty-eight, situated in said town, on Front street, together with all and singular the advantages and profits whatsoever

in and to the same belonging, or in any manner appertaining; and also all the estate, right, title, interest, property, claim, and demand whatsoever, of the said town of San Francisco, in and to any and every part thereof: to have and to hold all and singular the above-described lot of ground, as fully as the same was held and possessed by the said town of San Francisco, as aforesaid, unto the said Thomas Sprague, his heirs, and assigns, to the only proper use and behoof of the said Thomas Sprague, his heirs and assigns forever, provided that the said Thomas Sprague, his heirs and assigns, shall well and truly make, or cause to be made, each and every of the several payments before mentioned, at or before the days upon which they severally become due; otherwise this grant to be void, and all payments previously made thereon shall be forfeited to the use of the said town. And it is further agreed that said Thomas Sprague, his heirs and assigns, may take and hold possession of said lot until default be made in any one of said payments.

"In testimony whereof, I, the said John W. Geary, first alcalde as aforesaid, have hereunto set my hand and official seal, this third day of January, in the year of our Loid one thousand eight hundred and fifty.

(Signed) JOHN W. GEARY,

[Dist. of San Francisco, Cal.—Seal.] *First alcalde of San Francisco.*

"Signed, sealed, and delivered in presence of—

J. HERON FOSTER,

H. L. DODGE."

On which grant is endorsed receipts for the payments of the purchase-money as the same fell due.

And the plaintiffs moved the court to give the jury the following instruction in relation to said grant, to wit:

"If the jury believe that the lot in controversy was sold to Sprague by Alcalde Geary at public auction, in accordance with the terms of the grant known as Kearney's grant to the city of San Francisco, then the 2d section of the act of California legislature, approved the 26th of March, 1851, operated as a valid grant of the said lot, for the term of 99 years from the date thereof to said Sprague." To the giving of which instruction, the defendants, at the proper time, objected, and prayed that the same might be so modified as to render it necessary that the said grant should have been registered or recorded, on or before the 3d day of April, 1850, in same book of record in the office, custody, or control of the recorder of the county of San Francisco, at the date of the passage of the act of March 26th, 1851, entitled "An act to provide for the disposition of certain property of the State of California;" but the court overruled said objection, and refused so to modify said instruction, but gave the same as prayed by the plaintiffs; and further instructed the jury, as matter of law, that the said act of March 26th, 1851, did not require that the said grant read in evidence

by the plaintiffs should have been registered or recorded as aforesaid, and that, in order to make the said act operate in favor of the said Sprague, and the plaintiffs deriving title under him, it was sufficient if the land described in the grant had been sold to the said Sprague by authority of the ayuntamiento, or town or city council, or by any alcalde of the said town or city, at public auction, in accordance with the terms of the grant known as "Kearney's" grant to the city of San Francisco, without the same having been registered or recorded as aforesaid. To which opinion and decision of the court overruling said objections, and refusing to modify said instruction as prayed by the defendants, and giving said instruction as aforesaid, the defendants, by their counsel, duly excepted, and prayed that this their bill of exceptions might be signed and sealed by the court, and made a part of the record of this cause, which was accordingly done.

M. HALL McALLISTER, [SEAL.]
Judge Cir. court U. S. districts of California.

Perused by us:

HOLLADAY & SAUNDERS,
Attys. for Plffs.

July 14, 1855.

And afterwards, to wit, on the seventeenth day of July, in the year one thousand eight hundred and fifty-two, a motion for a new trial was made, reduced to writing, and filed in this cause, in the following words and figures, to wit:

In the Circuit Court of the United States for the districts of California.

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.

The defendants in the above entitled cause, (reserving, with the leave of the court for that purpose first had, their bill of exceptions to the instructions of the court to the jury,) move the court to set aside the verdict rendered by the jury, and to grant a new trial in said cause, with costs to abide the event, upon the following grounds:

1st. Because the verdict is contrary to the evidence in said cause.

2d. Because the verdict is contrary to the instructions of the court upon the facts proved.

3rd. Because the court should have directed the jury, as matter of law, that the resolution of the council of October 11th, 1848, was a confirmation of the grant by Leavenworth to Parker, within the meaning of the act of March 26th, 1851.

4th. Because the court erred in admitting evidence of fraud to impeach the grant by Leavenworth to Parker, and the confirmation thereof by the town council.

5th. Because the course pursued by the plaintiff's counsel in withholding the pretended resolution of the town council of October 3rd,

1849, until after the testimony was closed, and then suddenly introducing the same during the argument, operated as a surprise on the defendant's counsel, and tended to mislead the jury.

To Messrs. HOLLADAY & SAUNDERS, *Att'ys for pl'ffs.*

Please take notice, that the defendants in the above entitled cause will move the court, at the earliest practicable period, to set aside the verdict and grant a new trial in said cause, upon the grounds above stated; and, upon the argument of said motion, will refer to the documents given in evidence, and the minutes of the court at the trial.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Def'ts.

And afterwards, to wit, on the sixth day of August, in the year one thousand eight hundred and fifty-five, at the court-house aforesaid, before the court aforesaid, the following further proceedings were had in said cause, to wit:

PARDON G. SEABURY et als
vs.
L. W. PATCHIN et als. } Motion for a new trial.

Cause argued and held under advisement.

And afterwards, to wit, on the twenty-first day of August, being a day of the July term aforesaid, in the year aforesaid, at the court house aforesaid, before the said court, the following further proceedings were had in said cause, to wit:

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.

Motion for a new trial in this cause overruled; also on motion of R. A. Lockwood, att'y for defendants in this cause, it is ordered that there be a stay of proceedings for ten days.

And afterwards, to wit, on the twenty-eighth day of August, being a day of the July term aforesaid, in the year aforesaid, at the court-house aforesaid, before the said court, the following further proceedings were had in said cause, to wit:

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.

On motion of R. A. Lockwood, esq'r, att'y for pl'ffs in this cause, it is ordered that ten days' further time, from this date, be granted to settle bill of exceptions.

And afterwards, to wit, on the third day of September, in the year one thousand eight hundred and fifty-five, came the defendants aforesaid, by their attorneys, Lockwood, Tyler & Wallace, and filed a

second bill of exceptions in the cause aforesaid, which said bill is in words, terms, figures and endorsements, as follows, to wit:

In the Circuit Court of the United States for the districts of California.

L. W. PATCHIN and others ads. PARDON G. SEABURY and others.

Be it remembered, that on the trial of this cause before the court and jury, the plaintiffs, in support of their action, gave in evidence and relied upon the grant executed by John W. Geary, alcalde, &c., set out in the other bill of exceptions by the defendants, on file in this cause; and that the defendants, to support the issue in this action on their part, introduced and gave to the jury the following (among other) evidence, to wit: That T. M. Leavenworth was alcalde and chief magistrate of the district of San Francisco, (including the town or city of San Francisco,) during the year 1848, and acted as such alcalde and chief magistrate during that period, and that his immediate successor in said office was the said John W. Geary; that, on the 25th day of September, 1848, one William C. Parker presented to said Leavenworth a petition in writing, in the words and figures following:

"To T. M. LEAVENWORTH,

"*Alcalde and chief magistrate, district of San Francisco*:

"Your petitioner, the undersigned, a citizen of California, respectfully prays the grant of a title to a certain lot of land in the vicinity of the town of San Francisco, containing one hundred varas square, and bounded on the north by Washington street; on the west by a street, dividing said lot from the beach and water survey; on the south by Clay street, and on the east by unsurveyed land; said lot lying on the east part of the town, outside of the survey, and numbered on the plan marked on page one (1) of district records, as four hundred and fifty-six (456.)

"WM. C. PARKER."

That, on the said 25th day of September, 1848, the said Leavenworth executed and delivered to the said Parker, a document or act, written on the same sheet of paper as the above recited petition, in the words and figures following, to wit:

"TERRITORY OF CALIFORNIA.

"DISTRICT OF SAN FRANCISCO, *September* 25, *A. D.* 1848.

"Know all men by these presents, that William C. Parker has presented the foregoing petition for a grant of land, in the vicinity of the town of San Francisco, as therein described: Therefore, I, the undersigned, alcalde and magistrate of the district of San Francisco, in Upper California, do hereby give, grant and convey, unto the said William C. Parker, his heirs and assigns forever, the lot of ground as set forth in the petition, by a good and sufficient title, in consonance with the

established customs and regulations, being one hundred varas square, lying and being situated in the eastern vicinity of San Francisco and outside of the limits of the water-lot survey.

"In testimony whereof, I have hereunto set my hand, as alcalde and chief magistrate of the dist. aforesaid.

"Done at San Francisco, the day and year above written.

"T. M. LEAVENWORTH."

Which said petition and grant were produced and read in evidence to the jury, with a written endorsement thereon, in the words, figures and letters following, to wit: "Entered on page 31, book 'B,' of district records;" and a written note at the foot of said grant, in the following words, figures and letters, to wit:

"Recorded in the alcalde's office, in book 'F,' of land titles, on page number 18, at 10½ o'clock, a. m., November 28th, 1849.

"A. BOWMAN, *Rec'g Clerk.*

"Office 1st Alcalde, San Francisco."

The defendants then produced from the office of the county recorder of the county of San Francisco, a book purporting to be book 'B,' of district records of San Francisco, and gave evidence that the said book was in the alcalde's office when said Leavenworth held said office, and was by him turned over to the said Geary, as his successor, with other records, and by said Geary turned over to the county recorder of the county of San Francisco, on his going out of office, and was in the custody of the said county recorder at the passage of the act of March 26th, 1851, entitled "An act to provide for the disposition of certain property of the State of California," and had ever since remained there, and was a book of record in said office, and the entry next hereinafter recited was made therein before the 3d day of April, 1850; and thereupon the defendants gave in evidence the entry at page 31 of said book "B," in the handwriting of said Leavenworth, in the words and figures following, to wit:

"This is to certify, that a lot of land, containing one hundred varas square, and bounded on the north by Washington street, on the west by a street dividing said lot from the beach and water survey, on the south by Clay street, and on the east by unsurveyed lands; said lot lying in the east part of the town of San Francisco and outside of the survey, and numbered on the plan marked on page 1, district record, four hundred and fifty-six, (456,) was granted to Wm. C. Parker, and legal, quiet and perpetual possession of the same given him, his heirs and assigns, forever. September 25, A. D. 1848. Said lot lying outside the beach and water-lot survey.

"T. M. LEAVENWORTH,

"Cost $25. *Alcalde, dist. San Francisco.*"

The defendants also produced from the office of said county recorder a book purporting to be book "F" of land-titles, and gave evidence

that the same was a book of record in the office of said Geary, as alcalde as aforesaid, and procured and kept by said Geary shortly after his succeeding said Leavenworth in said office, about the month of August, 1849; and that various grants made by said Leavenworth and previous alcaldes were re-recorded in said book "F" while said Geary was in office, and that the said book "F" was by said Geary turned over to the said county recorder, in like manner as the said book "B," and was in the cnstody and office of said recorder, as a book of record, at the passage of said act of March 26th, 1851; and that the entry hereinafter next recited was made therein before the said 3d day of April, 1850. And one Sternson, a witness for the defendants, testified, that in November, 1849, he (the witness) took the said original grant to the office of the said Alcalde Geary to have the same re-recorded in the said book "F," and that the same was then so re-recorded in said book "F" by Geary's clerk; and that a few days afterwards the witness took said original grant and petition away from said office, the same then having thereon the said hereinbefore recited note at the foot of said grant, made by said clerk at the time of re-recording the same; and thereupon the defendants read in evidence the entry at page 18 of said book "F," in the words and figures following, to wit:

"*Petition and Grant to William C. Parker.*

"To T. M. Leavenworth, Alcalde and chief magistrate, district of San Francisco.

"Your petitioner, the undersigned, a citizen of California, respectfully prays the grant of a title to a certain lot of land in the vicinity of the town of San Francisco, containing one hundred varas square, and bounded on the north by Washington street; on the west by a street dividing said lot from the beach and water survey; on the south by Clay street, and on the east by unsurveyed lands; said lot lying on the east part of the town, outside of the survey, and numbered on the plan, marked on page one (1) of District Records, as four hundred and fifty-six (456.)

WM. C. PARKER."

"TERRITORY OF CALIFORNIA.

"DISTRICT OF SAN FRANCISCO, *September 25th, A. D.* 1849.

"Know all men by these presents, that Wm. C. Parker has presented the foregoing petition for a grant of land in the vicinity of the town of San Francisco, as therein described; therefore, I, the undersigned alcalde and magistrate of the district of San Francisco in Upper California, do hereby give, grant, and convey unto the said Wm. C. Parker, his heirs and assigns forever, the lot of ground as set forth in the petition, by a good and sufficient title, in consonance with the established customs and regulations, being one hundred varas square,

lying and being situated in the eastern vicinity of the town of San Francisco, and outside of the limits of the water-lot survey.

"In testimony whereof, I have hereunto set my hand as alcalde and chief magistrate of the dist. aforesaid.

"Done at San Francisco, the day and year above written.

"T. M. LEAVENWORTH.

"A true copy of the original 'petition and grant' received November 28th, A. D. 1849, at 10½ o'cl'k a. m. of said day.

"A. BOWMAN, *Record'g Clerk.*"

The defendants then gave in evidence a deed executed by the said Parker to the said Leavenworth, (in his individual capacity,) on the 26th day of September, 1848, in the usual form of a common-law conveyance, conveying the said one hundred vara lot to the said Leavenworth in fee simple, for the consideration of $25; and gave evidence that said deed was recorded in book "E" of land-titles in the office of the alcalde of San Francisco, on the 1st day of December, 1849.

The defendants also gave in evidence a deed, executed by the said Leavenworth (in his individual capacity) to one George W. Wright, on the 1st day of December, 1849, in the usual form of a common-law conveyance, conveying the said one hundred vara lot to the said Wright in fee simple, for the consideration of $5,000; and that said deed was recorded in said alcalde's office on the said 1st day of December, 1849.

Also a deed, in like form, executed by said George W. Wright to one Charles T. Botts, on the 26th day of February, 1850, conveying the undivided half of said one hundred vara lot to said Botts in fee simple, and that said deed was recorded on the 1st day of May, 1851.

Also a deed, in like form, executed by said George W. Wright to one Edward Field, on the 9th day of July, 1851, conveying the other undivided half of said one hundred vara lot to said Field in fee simple, for the consideration of twenty-three thousand four hundred and thirty dollars; and that said deed was recorded on the same day.

Also a deed, in like form, executed by the said Charles T. Botts to Joseph C. Palmer and George W. Wright, on the 1st day of October, 1852, conveying the one undivided half of said one hundred vara lot to the said Palmer and Wright in fee simple, for the consideration of forty thousand dollars; and, that said deed was recorded on the 3d day of November, 1852.

Also a deed, in like form, executed by the said Joseph C. Palmer and George W. Wright to the said Edward Field, on the 12th day of January, 1853, conveying the one undivided half of said one hundred vara lot to the said Field in fee simple, in consideration of seventy-five thousand dollars; and that said deed was duly recorded on the same day.

And it was admitted by both parties at the trial, that the lot in dispute in this action is part of the said one hundred vara lot; and that the defendants are in possession, under leases resting on the supposed title vested in said Edward Field, by the said conveyances from the

said George W. Wright and Joseph C. Palmer, and George W. Wright to said Edward Field; dated respectively, July 9th, 1851, and January 12th, 1853, as aforesaid; and the production of said leases was dispensed with at the trial by the consent of the parties.

And it was further admitted at the trial by both parties, that the lot in question is part of the beach and water-lots included in the first section of said act of March 26th, 1851, and included in the document known as Kearney's grant to the city of San Francisco, and is no part of the property known as the Government reservation; and that, on the 9th of September, 1850, the said lot was below the usual high water-mark of the bay of San Francisco, and covered by the tide waters; and that the said document known as the Kearney grant is correctly printed in the book called Wheeler's Land Titles of San Francisco, page 19; and the same was read in evidence, (the parties consenting that it should have the like effect as if the original were produced, and its execution proved,) in the words and figures following, to wit:

"I, Brigadier General S. W. Kearney, Governor of California, by virtue of authority in me vested by the President of the United States of America, do hereby grant, convey, and release unto the town of San Francisco, the people or corporate authorities thereof, all the right, title, and interest of the Government of the United States and of the Territory of California, in and to the beach and water-lots on the east front of said town of San Francisco, including between the points known as the Rincon and Fort Montgomery, excepting such lots as may be selected for the use of the General Government by the senior officers of the army and navy now there: Provided the said ground hereby ceded shall be divided into lots, and sold by public auction to the highest bidder, after three months' notice previously given. The proceeds of said sale to be for the benefit of the town of San Francisco.

Given at Monterey, capital of California, this 10th day of March, 1847, and in the 71st year of the Independence of the United States.

S. W. KEARNEY,

Brig. Gen. and Governor of California."

And the defendants further gave in evidence, that at a regular meeting of the ayuntamiento or town council of the said town or city of San Francisco, held on the 11th day of October, 1848, (at which were present the said T. M. Leavenworth, alcalde, and Messrs. Clarke, Jones, Mowry, and Buckelew, members of said council,) an entry was made in the record of the proceedings of said town council, in the following words, to wit:

"The alcalde of San Francisco made a statement to the council, whereupon the following preamble and resolution was offered, and unanimously adopted: Whereas, T. M. Leavenworth, the present alcalde, has represented to this body that he has made grants of several parcels of land adjacent to the town, and that the grants made during the interim of the council were for the purpose of raising funds to defray

the necessary expenses of the town and district; therefore, resolved by the council of the town of San Francisco, that the grants of land made by T. M. Leavenworth, alcalde of the district of San Francisco, be, and are hereby, ratified and confirmed;" and the defendants gave evidence that the said preamble and resolution were presented in writing to said ayuntamiento or town council, and passed, and adopted by said council in the usual mode in which that body acted, and entered in the record of the proceedings thereof; and, that the same was (with the other proceedings of said council at said meeting) published in a public newspaper printed and published in said town of San Francisco, on the 14th day of October, 1848; and thereupon the said defendants read in evidence the said preamble and resolution of the said ayuntamiento or town council.

And thereupon the plaintiffs, to rebut the said evidence adduced by the defendants, offered to impeach the validity of the grant by said Leavenworth, alcalde, &c., to said Parker, dated September 25th, 1848, and of the said resolution of the ayuntamiento or town council, dated October 11th, 1848, upon the ground that the said grant was issued in fraud of the said town or city, in pursuance of a fraudulent understanding between said Leavenworth and Parker, that said Parker should re-convey the said one hundred vara lot to said Leavenworth, and that Parker paid no consideration for said grant, and re-conveyed to said Leavenworth the next day without consideration; thus enabling Leavenworth, in his official or fiduciary capacity, to do indirectly what he could not by law do directly—acquire for his own benefit the property in respect of which he was the agent of said town or city; and upon the ground that the said resolution of confirmation was passed and adopted by the said town council in fraud of the said town or city, and that the members of the council who passed and adopted the same had individually obtained from said Leavenworth divers grants of town lots, which were intended to be confirmed to themselves by said resolution; and that the said grant and confirmation having been issued and passed, and adopted in bad faith and fraudulently; and the plaintiffs offered evidence tending to show that said grant and confirmation were fraudulently issued and passed and adopted as aforesaid; to which evidence the defendants at the proper time objected, upon the ground that it was not competent to impeach said grant and confirmation, for the reasons aforesaid; and that the said grant and confirmation were within the effect and meaning of the said act of March 26th, 1851, even if the same had been fraudulently issued and passed and adopted as aforesaid; but the court overruled said objection. And the court permitted the plaintiffs to give evidence to the effect aforesaid, and the plaintiffs did give such evidence; to which decision and ruling of the court, and to the admission of said evidence, the defendants, by their counsel, at the proper time duly excepted.

And be it also remembered, that the jury having returned the verdict elsewhere appearing in this cause, the defendants obtained leave of the court to move for a new trial, as well upon the ground of alleged error

in the aforesaid ruling, decision and opinion, as upon the further grounds of surprise, and that the verdict was against evidence; without waiving, but reserving, the benefit of the aforesaid exception to the said decision, opinion, and ruling of the court; and that said defendants accordingly, in due time and manner, moved the court to grant a new trial in this cause, for the reasons aforesaid, (among others;) but the court overruled said motion and refused to grant a new trial, being of opinion that there was no error in the aforesaid opinion, decision, and ruling; to which opinion and decision of the court, re-asserting the said opinion, ruling and decision hereinbefore excepted to, the said defendants at the proper time also duly excepted, and prayed that this their bill of exceptions might be signed and sealed by the court, and made part of the record of this cause, which is accordingly done.

M. HALL McALLISTER, [SEAL.]
Judge Cir. Court U. S. dists. of California.

And afterwards, to wit, on the fourth day of September, of term aforesaid, in the year last aforesaid, at the court-house aforesaid, before the said court, the following order was duly made and entered in said cause, to wit:

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.

On motion of S. W. Holladay, esq'r, att'y and counsel for plaintiffs in this cause, it is ordered that judgment be entered in the above entitled cause, pursuant to the verdict in the same.

On the day last aforesaid an agreement was filed in said cause, in words and figures as follows, to wit:

In the U. S. Circuit Court for the districts of California.

PARDON G. SEABURY and others
vs.
L. W. PATCHIN and others.

In the above entitled cause, it is agreed by the parties, plaintiffs and defendants, and by Edward Field, (under whom the original defendants hold,) that the said Edward Field be made a defendant to this suit by inserting his name in the complaint and answer, and that the final judgment on the verdict be entered as well against him as the said original defendants.

And it is further agreed by all parties, that the said Edward Field may sue out, and prosecute a writ of error in the Supreme Court of the United States upon said judgment in his own name alone, without joining the said other defendants, as if said Field were sole defendant in the action, and that no objection shall be taken in this court, or in said Supreme Court, for the non-joinder of said other defendants in said writ of error; and that said other defendants shall have no control over or right to interfere in the prosecution of said writ of error, but

that the same shall be conducted and prosecuted solely by said Edward Field.

And it is further agreed by the plaintiffs, with the said original defendants, and the said Edward Field, that, upon said Field's suing out such writ of error, and filing an approved supersedeas bond, there shall be a stay of execution on said judgment, as to the said original defendants, pending the said writ of error, and that pending said writ of error the said original defendants shall and may pay th erents of the premises sued for to their respective lessors or landlords, without being hereafter in anywise responsible or liable to the plaintiffs for any rents, damages, or mesne profits of said premises, upon the affirmance of said judgment by said Supreme Court; and that in case of such affirmance, the said plaintiffs will not look to said original defendants, or any of them, for any damages, rents, or mesne profits of said premises up to the time of notice of such affirmance, but will look exclusively to the said Edward Field, and the said supersedeas bond, for all such damages, rents, and mesne profits.

And it is further agreed and declared, that this present agreement be filed of record in said court, and constitute a part of the record of said cause, as well in this court as in said Supreme Court.

Dated September 3d, 1855.

LOCKWOOD, TYLER, & WALLACE,
Attys. for said Edward Field, and said original Defts.

HOLLADAY & SAUNDERS,
Attys. for Plffs.

Memo.—The intention and meaning of the foregoing agreement is, that the pltffs. shall not, (upon the filing of such supersedeas bonds as aforesaid,) hold the sd. original defts. responsible for any rents or damages, before or since the commencement of this suit, up to the time of notice of judgment of affirmance by the supreme court, but leaving the pltffs. at liberty to sue the sd. Field, or any other parties than said original defendants, for any such or other rents, damages, or mesne profits. It is also further stipulated by the parties, that the matter in controversy in this suit, exceeds the value of two thousand dollars.

LOCKWOOD, TYLER & WALLACE,
Attys. for Defts.

HOLLADAY & SAUNDERS,
Att'ys for Plffs.

Dated Sept. 3d, 1855.

And, on the day of the term, at the court-house, and before the court last aforesaid, the following order was duly made, and entered in said cause, to wit:

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.

On, and by consent of counsel and parties, it is ordered that the complaint and answer in this cause be amended, by inserting the name

of Edward Field as one of the defendants, pursuant to stipulation on file, dated the 3d day of September, A. D. 1855.

And on the fourth day of September, in the year one thousand eight hundred and fifty-five, judgment was entered in said cause, in words, terms, and figures, as follows, to wit:

UNITED STATES OF AMERICA,
State of California.

In the Circuit Court of the United States for the districts of California.

PARDON G. SEABURY, WARD M. PARKER and HENRY B. GIFFORD,
vs.
L. W. PATCHIN, WILLIAM NEAL, WILLIAM B. PEAKE, E. J. FAIRCHILD and EDWARD FIELD.

This cause came on regularly for trial—S. W. Holladay, esq., as attorney, and S. W. Inge, esq., of counsel, appearing for the plaintiffs; and Rufus A. Lockwood, esq., appearing as counsel for the defendants.

When, a jury being duly accepted, empannelled and sworn in the cause, witnesses were duly sworn and examined for the plaintiffs and defendants and documentary proof introduced by the parties respectively:

The evidence being closed, and counsel for the parties being heard in argument, and the charge of the court being given, the jury retired for consideration, and subsequently returned into court, and in answer to their names say: "We, the jury, find for the plaintiffs." Wherefore, by reason of the law and the evidence in the case, and the verdict aforesaid, and by the consideration of the court, it is ordered, adjudged, and decreed, by the court, that the said plaintiffs, Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, do have and recover of the defendants herein, L. W. Patchin, William Neal, William B. Peake, E. J. Fairchild, and Edward Field, the possession of the lot of land or premises in the complaint mentioned; that is to say, the following described lot or parcel of land, situate in the city of San Francisco, and known and designated on the official map or plan of the said city as water-lot number 458, and being also one of the lots known and designated by law as the San Francisco beach and water-lots: Beginning at a point on the easterly side of Front street, 45 feet and 10 inches southwardly from the southerly line of Washington street, running thence southwardly along the easterly line of Front street 45 feet and 10 inches; thence eastwardly parallel with Washington street 137½ feet; thence northwardly parallel with Front street 45 feet, 10 inches; thence westwardly parallel with Washington street 137½ feet, to the place of beginning; the same being a lot 45 feet 10 inches front, on Front street, by 137½ feet deep: and that the said plaintiffs have a writ of possession, commanding the marshal to remove the defendants and all other persons from the said premises, and to put

the plaintiffs into the possession thereof; and also that the plaintiffs have and recover of the said defendants the sum of two hundred and fifty-five $\frac{65}{100}$ dollars, their costs and disbursements in this action; and that they have execution therefor.

Dated San Francisco, September 4th, A. D. 1855.

M. HALL McALLISTER,
Judge Cir. Court U. S. dists. of Cal'a.

And afterwards, to wit, on the fifth day of September, in the year one thousand eight hundred and fifty-five, upon the prayer of the defendants, the following writ of error was duly issued in this cause, in the words following, to wit:

UNITED STATES OF AMERICA, *to wit:*

The President of the United States of America, to the Judge of the Circuit Court of the United States for the districts of California, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said circuit court before you, between Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, plaintiffs; and L. W. Patchin, William Neale, William B. Peake, E. J. Fairchild, and Edward Field, defendants, manifest errors have happened, to the great damage of the said Edward Field, as by his complaint appears: and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf:

You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the Capitol, in the City of Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

[The Seal of the Circuit Court for the districts of Cal.]

GEO. PEN. JOHNSTON,
Clerk U. S. C. C. D. C.
Pr. J. EDGAR GRYMES, *Deputy.*

LOCKWOOD, TYLER & WALLACE, *Att'ys*
For EDWARD FIELD, *Pl'ff in error.*

Endorsed: I allow the within writ of error.

M. HALL McALLISTER,
Judge Cir. Court U. S. for dists. of California.

And afterwards, to wit, on the same day, and in the year last aforesaid, the following citation upon the aforesaid writ of error was duly issued by the judge of said court, in the words following, that is to say:

UNITED STATES OF AMERICA, *to wit:*

To Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the districts of California, wherein Edward Field is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable M. Hall McAllister, judge of the circuit court of the United States for the districts of California, at the city of San Francisco, this 5th day of September, in the year of our Lord one thousand eight hundred and fifty-five.

[The Seal of the Circuit Court for the districts of Cal'a.]

M. HALL McALLISTER,
Judge Cir. Court U. S. dists. of California.

Attest: GEO. PEN. JOHNSTON, *Clerk.*
Pr. J. EDGAR GRYMES, *Deputy.*

Endorsed:

"We hereby acknowledge due service of the within citation in error, this 5th day of September, 1855.

HOLLADAY & SAUNDERS,
Att'ys for D'fts in error."

And on the same day and year last aforesaid, the following supersedeas bond, by direction of the counsel for the respective parties, was placed on file in said cause.

In the Circuit Court of the United States for the districts of California.

EDWARD FIELD
vs.
PARDON G. SEABURY, WARD M. PARKER, and HENRY B. GIFFORD. } In error.

Know all men by these presents, that we, Charles W. Cook and Edward Jones, of the city of San Francisco, bankers, are held and

firmly bound unto the above-named Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, in the sum of five thousand dollars, to be paid to the said Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 5th day of September, A. D. 1855.

Whereas, the above-named Edward Field hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered by the circuit court of the United States for the districts of California, in a suit in said court, between the said Pardon G. Seabury, Ward M. Parker and Henry B. Gifford, plaintiffs, and L. W. Patchin, William Neale, William B. Peake, E. J. Fairchild, and the said Edward Field, defendants: Now, therefore, the condition of this obligation is such, that if the above-named Edward Field shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CHARLES W. COOK, [SEAL.]
EDWARD JONES. [SEAL.]

Sealed and delivered in presence of—
M. HALL MCALLISTER.

I approve the above bond. September 5th, 1855.
M. HALL McALLISTER,
Judge Cir. Court U. S. dists. of Cala.

And afterwards, to wit, on the twenty-fifth day of September, in the year one thousand eight hundred and fifty-five, the following agreement and stipulation, by direction of the counsel for the respective parties, was placed upon file in said cause:

In the Circuit Court of the United States for the districts of California.

PARDON G. SEABURY et als.
vs.
L. W. PATCHIN et als.

It is agreed by the parties in this action, plaintiffs and defendants, that the writ of error sued out on the judgment rendered in said action by the said Edward Field, plaintiff in error, against the said Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, defendants in error, shall stand for trial in the Supreme Court of the United States at the now ensuing December term thereof, without notice of trial or argument; and that the plaintiff may assign errors in said Supreme Court at any time before trial, and the defendants in error shall file their joinder in error at or before the calling of the cause for trial; and on failure of the defendants to join in error, the plaintiffs may proceed to trial without such joinder; and on failure of the plaintiff to assign

errors, at or before the calling of the cause for trial, the defendants may move to dismiss the writ of error.

And it is agreed that this stipulation be entered as part of the record of said cause.

LOCKWOOD, TYLER & WALLACE,
Att'ys for defts.
HOLLADAY & SAUNDERS,
Att'ys for plff.

Dated September 19th, A. D. 1855.

In the Circuit Court of the United States for the districts of California.

I, Geo. Pen. Johnston, clerk of the circuit court of the United States for the districts of California, at San Francisco, do hereby certify, that the foregoing 60 pages contain a full, correct, and faithful transcript of the record of the proceedings had in the above entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the court-house in the city of San [SEAL.] Francisco, this 11th day of October, A. D. 1855, and of the independence of the United States of America the eightieth.

GEO. PEN. JOHNSTON, *Clerk.*

UNITED STATES OF AMERICA,
Districts of California, ss:

I, M. Hall McAllister, judge of the circuit court of the United States for the districts of California, do hereby certify, that Geo. Pen. Johnston, who hath signed the foregoing certificate, is, and was on the day of the date of the same, the clerk of said court at the city of San Francisco, duly commissioned and qualified; that his signature above to said certificate is genuine, and that the said attestation or certificate is in due form of law.

Dated this 11th day of October, A. D. 1855.

M. HALL McALLISTER,
Judge Cir. Court U. S. districts of Cal'a.

In the Supreme Court of the United States.

EDWARD FIELD, plaintiff in error,
vs.
PARDON G. SEABURY, WARD M. PARKER, and HENRY B. GIFFORD, defendants in error.

In error to the Circuit Court of the United States for the districts of California.

Comes now the said plaintiff, and says, that in the record and proceedings of the said circuit court in the above entitled cause, and in the giving of judgment therein, there is manifest error, in this:

That it appears by said record that judgment was given by said circuit court against the said plaintiff in error, and in favor of the said de-

fendants in error, to the great damage of said plaintiff in error; whereas, by the law of the land, and the law and custom of the United States, judgment in said cause should have been given in favor of the said plaintiff in error, and against the said defendants in error; and this the said plaintiff is ready to verify.

Wherefore, he prays that the said judgment of said circuit court be in all things reversed, annulled, and held for nought; and that the said plaintiff be restored to all he hath lost thereby.

UNITED STATES OF AMERICA, *to wit:*

The President of the United States of America, to the judge of the circuit court of the United States for the districts of California, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between Pardon G. Seabury, Ward M. Parker, and Henry B. Gifford, plaintiffs, and L. W. Patchin, William Neale, William B. Peake, E. J. Fairchild, and Edward Field, defendants, manifest errors have happened, to the great damage of the said Edward Field, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf,

You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the capitol, in the city of Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

[The Seal of the Circuit Court for the districts of Cal'a.]

GEO. PEN. JCHNSTON,
Clerk U. S. C. C. D. C.
Pr. J. EDGAR GRYMES, *Deputy.*
LOCKWOOD, TYLER & WALLACE,
Att'ys for Edward Field, Pl'ff in error.

I allow the within writ of error.

M. HALL McALLISTER,
Judge Cir. Court U. S. for dists. of California.